

OFFICE OF THE ATTORNEY GENERAL



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NOV 21 1978

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Mr. John W. Pemberton
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State Capitol
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State Departments or Agencies -
Officers and Employees - Annual
and Sick Leave

Heirs of deceased state employee
are entitled to payment for accu-
mulated annual leave of such
employee.

Dear Mr. Pemberton:

This office is in receipt of your request for an opinion
as follows:

"My question to you is as follows:
If a man with forty-two (42) years
service to the State of Alabama
dies, is his widow, or are his heirs,
entitled to one-half (1/2) of the
accumulated sick leave and/or vaca-
tion?"

Section 36-26-35, Code of Alabama 1975, states that all
persons regularly employed by the State of Alabama "shall be
entitled to accumulate annual leave" on the basis set out in
such section. Rule XI, Section 2(a), adopted by the Personnel


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Board pursuant to the rule making authority conferred on such Board by Section 36-26-9, Code of Alabama 1975, provides in part that an employee may be paid, upon separation from service, for the actual number of days of annual leave he has earned, up to a maximum of sixty days. Thus by statute and by Board rules, employees have a right to receive annual leave and subject to a limit of 60 days, to be paid for such leave upon separation from service. Thus the heirs of a deceased state employee are entitled to receive the pay for the earned accumulated annual leave credited to the employee at the time of his death.

In regard to sick leave neither statutory law or Personnel Board rules make provision for payment of accumulated sick leave to an employee on separation from service, other than upon retirement, nor to the heirs of a deceased state employee. In fact Personnel Board Rule XI, Section 2(b) states that "sick leave with pay is not a right for which the employee may make demand, but is a privilege granted in accordance with prescribed rules and regulations" I might note that this matter has been considered by the legislature in recent years. House Bill 576 which provided for payment of accumulated sick leave to heirs of a deceased state employee was introduced and considered by the 1979 Legislature in its Regular Session but was not adopted. This office as a matter of fact endorses legislation which will provide for payment of accumulated sick leave to the heirs of a deceased state employee.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General
By-


JAMES R. SOLOMON, JR.
Assistant Attorney General

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